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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In re Applications of ) MM DOCKET NO. 92-64  
 )  
WIND N' SEA FM LIMITED PARTNERSHIP ) File No. BPH-901224ME  
 )  
J.H. COMMUNICATIONS ) File No. BPH-901226MB  
 )  
For a Construction Permit for a )  
New FM Station on Channel 295A at )  
Ocean City, Maryland )

To: Administrative Law Judge  
Edward Luton

**MASS MEDIA BUREAU'S COMMENTS ON**  
**JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT**

1. On August 14, 1992, Wind N' Sea FM Limited Partnership ("Wind") and J.H. Communications ("JH") filed a Joint Petition for Approval of Settlement Agreement ("Joint Petition"). The parties filed supplements to the Joint Petition on August 19 and 24, 1992.<sup>1</sup> The Mass Media Bureau submits the following comments.

2. The Joint Petition, as supplemented, is accompanied by a revised settlement agreement which contemplates the grant of JH's application and the dismissal of Wind's application. In consideration for the dismissal of Wind's application, JH proposes to pay Wind \$37,500, which sum represents Wind's

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<sup>1</sup> The August 19, 1992, supplement provided financial documentation in support of Wind's legitimate and prudent expenses. The August 24, 1992, supplement provided a revised settlement agreement which eliminated objectionable contingencies which the parties had proposed in the initial settlement agreement.

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legitimate and prudent expenses incurred in connection with the preparation and prosecution of its application. The revised settlement agreement also withdraws JH's pledge to divest Station WBSK-FM, Windsor, Virginia.


3. Both parties state that the settlement agreement will serve the public interest by obviating the need for a costly and time-consuming comparative hearing and by facilitating the early inauguration of a new FM service in Ocean City, Maryland. A principal of each applicant also declares under penalty of perjury that his or her application was not filed for the purpose of reaching or carrying out a settlement.


4. The Bureau submits that the Joint Petition satisfies the requires of § 73.3525 of the Commission's Rules, which implements § 311(c)(3) of the Communications Act of 1934, as amended. Specifically, a copy of the settlement agreement has been timely filed, and the applicants have established that approval of the settlement agreement would serve the public interest and that neither application was filed for an improper purpose. Additionally, Wind has demonstrated that the monetary consideration that it will receive does not exceed its legitimate and prudent expenses. See Settlement Agreements, 6 FCC Rcd 85 (1990), modified, 6 FCC Rcd 2901 (1991). Finally, JH should be permitted to withdraw its pledge to divest its interests in Station WBSK-FM, Windsor, Virginia. Such a withdrawal is

consistent with Reform of Comparative Hearing Process, 6 FCC Rcd 157, 159-160 (1990), recon. granted in part, 6 FCC Rcd 3403, 3403 (1991).

5. Accordingly, the Joint Petition, as supplemented, should be granted; the revised settlement agreement should be approved; Wind's application should be dismissed with prejudice; and JH's application should be granted.

Respectfully submitted,  
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Chief, Hearing Branch

  
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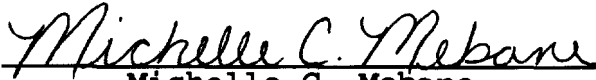
August 28, 1992

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 28th day of August 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Joint Petition for Approval of Settlement Agreement" to:

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